

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	24-CR-85(ENV)
Plaintiff,	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
GUNVOR, S.A.,	:	March 1, 2024
Defendant.	:	11:00 a.m.

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TRANSCRIPT OF CRIMINAL CAUSE FOR PLEA AND SENTENCING
BEFORE THE HONORABLE ERIC N. VITALIANO
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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Proceedings

2

1 (In open court.)

2 THE COURTROOM DEPUTY: Court is now open.

3 The Honorable Eric N. Vitaliano presiding. Case
4 on calendar is USA versus Gunvor, case number 24-CR-85, on
5 for guilty plea and sentence.

6 Will the attorneys please note their appearance,
7 beginning with Government counsel.

8 MR. LAX: Good morning, Your Honor.

9 Jonathan Lax, Nicholas Axelrod, and John Robell
10 here on behalf of the Government.

11 THE COURT: Good morning, Mr. Lax, and your entire
12 table.

13 MR. RACANELLI: Mark Racanelli and Rebecca
14 Mermelstein with O'Melveny & Myers, representing Gunvor,
15 S.A.

16 Your Honor, good morning.

17 We're here with the Chief Legal Officer of Gunvor
18 S.A., Jean-Baptiste Leclercq.

19 THE COURT: And good morning to you,
20 Mr. Racanelli, and your table.

21 And certainly Mr. Leclercq, welcome as well.

22 THE COURTROOM DEPUTY: Counsel for both sides are
23 present, and the representative for Gunvor.

24 THE COURT: All right. Be seated, please.

25 Mr. Lax, I guess if you can catch the record up to

Proceedings

3

1 what it is we think we are doing this morning.

2 MR. LAX: Yes.

3 THE COURT: And then we will all hope that we will
4 achieve it.

5 MR. LAX: Yes, Your Honor.

6 THE COURT: You did a good job the last time, so
7 you have something to shoot for.

8 MR. LAX: Hopefully we'll hit the mark.

9 So we're here today, as the Court knows, for the
10 defendant Gunvor, S.A. to waive indictment and plead guilty
11 pursuant to a plea agreement, and then, if the Court
12 permits, to proceed to sentencing as well. That's the high
13 level order of procedure here.

14 THE COURT: All right.

15 So why don't we begin with swearing the witness,
16 because eventually Mr. Leclercq's going to have to provide
17 the sworn testimony. So we might as well get that done at
18 the start so we don't lose track of it. I'll have the
19 Deputy Clerk do that.

20 (Mr. Leclercq sworn.)

21 THE COURT: All right.

22 Mr. Leclercq, I'm going to at some point be asking
23 you questions. First thing that I want to establish on the
24 record with you is that Mr. Racanelli and Ms. Mermelstein
25 are your lawyers and the lawyers for Gunvor in this case.

Proceedings

4

1 MR. LECLERCQ: Yes, they are, Your Honor.

2 THE COURT: That means that at this point, if you
3 need to speak privately with them during the proceedings
4 this morning, please let me know and I will permit you to do
5 so without any penalty.

6 Do you understand that?

7 MR. LECLERCQ: Understood. Thank you, Your Honor.

8 THE COURT: You're welcome.

9 Now, also, you've now taken an oath, and during
10 the course of the hearing there will be various questions
11 asked of you. What is important to understand is that if
12 you personally answer any of these questions falsely,
13 regardless of who might ask the question during the hearing,
14 then those answers can be used in a separate prosecution for
15 the crimes of perjury or making a false statement against
16 you personally.

17 Do you understand that?

18 MR. LECLERCQ: I understand, Your Honor.

19 THE COURT: All right.

20 So now, Mr. Lax, this is the rare proceeding on to
21 Rule 11, under subsection C, where the Court is involved in
22 the sentencing as part of the plea itself. Please walk us
23 through how we're going to get from point A to point B, and
24 then we will then touch base again with Mr. Leclercq.

25 MR. LAX: Yes, Your Honor.

Proceedings

5

1 So I think we would proceed really just as a
2 normal waiver of indictment and plea proceeding. We've
3 prepared the Waiver of Indictment form. And because it's a
4 corporate matter, there's also a separate disclosure
5 statement pursuant to Rule 12.4, and those have been
6 prepared for the Court.

7 If the Court accepts the plea and the recommended
8 sentence pursuant to Rule 11(c)(1)(C), that's one option.
9 Of course if the Court rejects it, then the company will
10 have an opportunity to withdraw the plea, and we'll
11 essentially go back to where we are starting right now.

12 THE COURT: All right. I want to touch base now
13 with Mr. Leclercq.

14 There is a corporate resolution, as I understand
15 it from the opening statement by counsel, that you are the
16 Chief Legal Officer of Gunvor?

17 MR. LECLERCQ: I am, Your Honor.

18 THE COURT: And were you present at the board
19 meeting where the corporate resolution was adopted that
20 authorized the acceptance of the plea and your designation
21 as the representative to appear in court in connection with
22 the plea proceedings?

23 MR. LECLERCQ: I was, yes.

24 THE COURT: And were you physically present or
25 were you present by some form of communication?

Proceedings

6

1 MR. LECLERCQ: No, I was physically present, Your
2 Honor.

3 THE COURT: All right. Now, the proposed sentence
4 itself, was that formally presented to the board?

5 MR. LECLERCQ: It was.

6 THE COURT: And was it discussed in your presence?

7 MR. LECLERCQ: It was, yes, Your Honor.

8 THE COURT: And what action did the board take?

9 MR. LECLERCQ: It was discussed and explained by
10 the legal team which is here around me, discussing the
11 consequences, and it has decided to proceed. At that time I
12 was appointed by a resolution of the Board of Directors as
13 the corporate representative for Gunvor, S.A. for the
14 purpose of those proceedings, Your Honor.

15 THE COURT: And in those discussions before the
16 board adopted the resolutions, was there a discussion of the
17 corporation's rights under American law?

18 MR. LECLERCQ: Yes.

19 THE COURT: And the decision to adopt the
20 resolution was after those discussions were held so that the
21 board members, when they acted on it, were aware of what
22 defenses and rights they might otherwise have under American
23 law?

24 MR. LECLERCQ: Yes, indeed. Exactly, Your Honor.

25 THE COURT: All right.

Proceedings

7

1 Because I don't want to do it multiple times,
2 Mr. Lax, so we'll catch up with the actual details of the
3 proposed sentence later on in the proceedings this morning.

4 Now, Mr. Leclercq, you are present before the
5 Court in a traditional way, but in a shorthand way at the
6 same time. I want to inquire on various topics to assure
7 myself that the plea that you are about to offer is a valid
8 one so that there are certain touchstones.

9 First, it might not be viewed as something that's
10 important, but the Court considers it important, and that is
11 your ability physically at this point to offer the plea on
12 behalf of the corporate defendant, and that begins with the
13 following questions:

14 In the last 24 hours, have you taken any narcotic
15 drugs?

16 MR. LECLERCQ: No, Your Honor.

17 THE COURT: In the last 24 hours, have you taken
18 medications of any kind?

19 MR. LECLERCQ: No, Your Honor.

20 THE COURT: In the last 24 hours, have you taken
21 any alcoholic beverages?

22 MR. LECLERCQ: I had some wine at dinner last
23 night.

24 THE COURT: Last night.

25 As you appear in court this morning, is your mind

Proceedings

8

1 clear?

2 MR. LECLERCQ: Yes, it is, Your Honor.

3 THE COURT: And you understand the circumstances
4 and what's going on around you in the courtroom?

5 MR. LECLERCQ: I do.

6 THE COURT: Now, Mr. Racanelli, were you present
7 also at the adoption of the board resolution?

8 MR. RACANELLI: I was, Your Honor.

9 THE COURT: And at the time that the resolution
10 was adopted, were you providing legal advice to the
11 corporate board?

12 MR. RACANELLI: Correct, Your Honor.

13 THE COURT: And on the basis of your conversations
14 and dealings with the board, do you believe that the board
15 understood the nature of the proceedings that we're about to
16 conduct now?

17 MR. RACANELLI: Definitely, Your Honor. We went
18 over the nature of the Plea Agreement, the specifics of the
19 agreement, what would be required of the company, the rights
20 it had, the rights it would be giving up, as well as the
21 sentencing guidelines and the specific sentences.

22 THE COURT: You covered all of those with the
23 board?

24 MR. RACANELLI: Yes, Your Honor.

25 THE COURT: All right.

Proceedings

9

1 Now, one of those rights, and we will go to that
2 next, Mr. Leclercq, is the right to proceed by way of grand
3 jury indictment. Ordinarily, a felony charge of this kind
4 would be prosecuted pursuant to an indictment of a grand
5 jury, and there would be a right to proceed that way, but
6 it's a right that is waivable.

7 Had the board considered the issue of whether or
8 not they should waive grand jury indictment?

9 MR. LECLERCQ: It did, yes, Your Honor.

10 THE COURT: Now I'm going to go over that briefly
11 in open court to make sure that this is your understanding
12 and it matches my understanding, because ordinarily, when we
13 speak to a grand jury indictment, you have to know what a
14 grand jury is.

15 A grand jury is a body of citizens that is
16 selected in various federal district courts. It's a body
17 that consists of at least 16 but not more than 23 people,
18 and at least 12 of those who serve on the grand jury would
19 have to vote to indict a defendant for the prosecution to
20 proceed.

21 Ordinarily what happens is that the Government
22 would present evidence to the grand jury, and if the grand
23 jury were to conclude that there was sufficient evidence to
24 believe that certain individual or a corporation had
25 committed an offense, then the grand jury would vote to

Proceedings

10

1 indict that person and the prosecution would begin. We
2 understand that Gunvor has decided to waive that process.

3 So the question is: What happens if you decided
4 now, on behalf of the corporation, that you were not going
5 to proceed that way? Well, then the Government would have
6 the option of presenting evidence to a grand jury and
7 indicting the corporation. Once they presented that
8 evidence, a grand jury might or might not indict the
9 corporation.

10 But this is clear: If you do waive, on behalf of
11 the corporation, grand jury indictment and proceed by way of
12 information, we will proceed just as if the grand jury had
13 indicted the corporation.

14 Do you understand that?

15 MR. LECLERCQ: Yes, Your Honor.

16 THE COURT: And it is your desire to waive grand
17 jury indictment and proceed by way of information?

18 MR. LECLERCQ: Yes, Your Honor.

19 THE COURT: Mr. Racanelli, do you know of any
20 reason why the corporation should not proceed by way of
21 information?

22 MR. RACANELLI: No, Your Honor.

23 THE COURT: Now, I understand from what Mr. Lax
24 said that somewhere there is a waiver form. Is that waiver
25 form of the kind that I must execute?

Proceedings

11

1 MR. LAX: Yes, Your Honor. It's the standard
2 waiver form.

3 THE COURT: Okay. It's the standard waiver form.
4 And has the Deputy Clerk received the standard
5 waiver form?

6 (Pause in proceedings.)

7 THE COURT: The Court has now executed the waiver.
8 There is also the Corporate Resolution, and I'm
9 discussing with the clerk and I'll invite Mr. Lax's
10 suggestion here, should that be affixed to anything? And if
11 so, to which of the documents? And if not --

12 MR. LAX: Your Honor, the disclosure statement, I
13 think it only needs to be filed. It doesn't have to be
14 attached to a particular document.

15 THE COURT: Okay.

16 So the Court now has executed the Waiver of
17 Indictment form and returned it to you, Mr. Leclercq, on
18 behalf of the corporation.

19 As I indicated at the top of the hearing, these
20 questions are designed to assure the Court that Gunvor's
21 decision to plead guilty to the one count in the information
22 is knowing and voluntary.

23 Also, in connection with that, the fact that I've
24 now accepted the corporation's Waiver of Indictment and its
25 willingness to proceed by way of information does not mean

Proceedings

12

1 that the corporation is obligated to plead guilty to the
2 information. It only means that we are proceeding by way of
3 information and not indictment.

4 That being said, we understand, of course, that
5 under the Rule 11 plea allocution, that the corporation
6 intends to plead guilty, and this is where we begin the
7 inquiry to assure that it is a valid plea.

8 The first and most important thing to understand
9 is, even if the corporation is guilty, it doesn't have to
10 plead guilty. It remains the Government's obligation to
11 establish the guilt of a defendant beyond a reasonable
12 doubt. And if the Government prosecutor does not or cannot
13 meet his burden of proof, then the jury would be obligated
14 to find that defendant not guilty even if the defendant is
15 guilty.

16 So it remains a choice for the corporation to
17 either plead guilty or not guilty to the information that is
18 now before the Court.

19 Do you understand that?

20 MR. LECLERCQ: Yes, Your Honor.

21 THE COURT: If you had pled not guilty, you would
22 be entitled to a speedy and public trial on one count in the
23 information, with the assistance of counsel who is
24 presumably in this courtroom, before a jury.

25 Do you understand that?

Proceedings

13

1 MR. LECLERCQ: Yes, I do, Your Honor.

2 THE COURT: But by pleading guilty, you give up
3 that right. The Government would no longer have to
4 establish your guilt beyond a reasonable doubt.

5 Do you understand that?

6 MR. LECLERCQ: Yes, Your Honor.

7 THE COURT: Now, if you had pled not guilty and we
8 proceeded to a trial, witnesses for the Government would
9 have to come into open court and testify before you, and
10 you'd go to trial with the assistance of counsel on the
11 charge contained in the information. Your counsel could
12 cross-examine the witnesses who testify against the
13 corporation, could object to evidence offered at the trial,
14 could raise defenses on behalf of the corporation, and could
15 even compel witnesses to testify who did not want to
16 testify.

17 Do you understand that?

18 MR. LECLERCQ: Yes, Your Honor.

19 THE COURT: But by pleading guilty, the
20 corporation gives up its right to confront the witnesses, it
21 gives up its right to raise defenses, and it gives up its
22 right to call witnesses to testify on its own behalf.

23 Do you understand that?

24 MR. LECLERCQ: Yes, Your Honor.

25 THE COURT: Now, if, in fact, you do plead guilty,

Proceedings

14

1 you would be giving up all of these Constitutional rights
2 that we have just discussed. There will be no trial of any
3 kind. I will simply enter a judgment of conviction against
4 the corporation on the strength of the guilty plea.

5 Do you understand that?

6 MR. LECLERCQ: Yes, I do, Your Honor.

7 THE COURT: Now, Mr. Lax, in connection with this
8 plea, is there an appellate waiver in the plea of any kind?

9 MR. LAX: There is, Your Honor. It's contained
10 within paragraphs 17 and 18 of the Plea Agreement, and it's
11 operative so long as the Court imposes a sentence anywhere
12 within the statutory maximum.

13 THE COURT: So he gives up basically all rights to
14 appeal?

15 MR. LAX: Including collateral attacks, Your
16 Honor, yes.

17 THE COURT: Okay.

18 So is it fair to say that there is no difference
19 between a trial before a jury and this plea from an
20 appellate review perspective? It would be just the
21 opposite, that by entering into this agreement, the
22 corporation is giving up all of its rights to appeal?

23 MR. LAX: Essentially, yes, Your Honor.

24 THE COURT: And you understand that?

25 MR. LECLERCQ: Yes, I do, Your Honor.

Proceedings

15

1 THE COURT: All right.

2 So at this point why don't you, Mr. Lax, walk us
3 through exactly what is in the Plea Agreement. I don't
4 think we've marked it yet as an exhibit, but we should
5 probably do that first.

6 MR. LAX: I'm happy to hand up a copy.

7 THE COURT: Does that have signatures on it,
8 Mr. Lax?

9 MR. LAX: It should, Your Honor. I'll double
10 check.

11 Yes.

12 THE COURT: We usually mark --

13 MR. LAX: It does.

14 THE COURT: We mark the original. We'll mark the
15 originals Court Exhibit 1.

16 MR. LAX: It is the agreement and the attachments
17 and a copy of the information, as well, a physical copy of
18 that.

19 (Court Exhibit 1 marked and received in evidence.)

20 THE COURT: The Deputy Clerk will present the
21 exhibit to the parties.

22 First on the defense side, Mr. Leclercq, with
23 respect to that Plea Agreement, is that your signature on
24 the Plea Agreement?

25 MR. LECLERCQ: Yes, it is, Your Honor.

Proceedings

16

1 THE COURT: And is that the Plea Agreement that
2 was presented to the board and the board approved by
3 corporate resolution?

4 MR. LECLERCQ: Yes, it is, Your Honor.

5 THE COURT: And is that the Plea Agreement that
6 the board authorized you to come to court today and plead
7 guilty pursuant to?

8 MR. LECLERCQ: Yes, Your Honor.

9 THE COURT: And, Mr. Racanelli, did you sign that
10 as well?

11 MR. RACANELLI: I did, Your Honor.

12 THE COURT: And while we're there, there is a
13 corporate resolution. Whose signatures are on that,
14 Mr. Racanelli?

15 MR. RACANELLI: Your Honor, the corporate
16 resolution is Attachment B, as in boy, to the Plea Agreement
17 which is dated December 21, 2023, and that contains the
18 signatures of the three board members that Mr. Leclercq and
19 I presented the terms of the plea to.

20 THE COURT: And is your signature on it, as well?

21 MR. RACANELLI: No, Your Honor. Just the board
22 members.

23 THE COURT: Just the board members.

24 And is that the document that authorized
25 Mr. Leclercq to plead guilty on behalf of the Gunvor?

Proceedings

17

1 MR. RACANELLI: It is, Your Honor.

2 THE COURT: Now, on the Government's side, who
3 signed the Plea Agreement?

4 MR. LAX: Yes, Your Honor.

5 It's fully executed by myself, Jonathan Robell,
6 and Hunter Smith, all at the Department of Justice.

7 THE COURT: All signed.

8 Now that we've identified that, Mr. Lax, earlier I
9 had indicated we would try to do this only once. We may end
10 up doing it twice, but certainly this is the first time.

11 If we would now go over the specific consequences
12 of the entry of the plea of guilty to this one count of the
13 information.

14 MR. LAX: So the statutory maximum consequences
15 are set forth in the plea agreement in paragraph 19. They
16 include a fine of \$500,000, or twice the gross pecuniary
17 gain or gross pecuniary loss resulting from the offense,
18 whichever is greater. In this case, that would be twice the
19 gain. So here, the gain has been calculated as
20 \$384,164,176. So twice that would make the maximum fine
21 \$768,328,352.

22 The maximum also includes a five-year term of
23 probation, a mandatory special assessment of \$400,
24 restitution, if any, as ordered by the Court, as well as
25 criminal forfeiture. And there is an agreed-upon forfeiture

Proceedings

18

1 amount as part of the agreement, as well, and the forfeiture
2 amount is \$287,133,444.

3 THE COURT: Now, Mr. Leclercq, is that your
4 understanding, that that is the maximum punishment that
5 could be imposed as a result of Gunvor's guilty plea?

6 MR. LECLERCQ: Yes, Your Honor.

7 THE COURT: Now, this being a plea to a set
8 sentence, if you would now, Mr. Lax, go over with us the
9 specific sentence that the Government is recommending that
10 the Court impose now that we know what the maximum is.

11 MR. LAX: Yes, Your Honor.

12 So in terms of the criminal fine, the agreed-upon
13 recommended amount is \$374,560,071. The forfeiture amount
14 is \$287,138,444. Plus the \$400 special assessment.

15 THE COURT: And the five-year probation, does that
16 apply as well?

17 MR. LAX: It's part of the maximum, Your Honor,
18 but the term of the agreement is a three-year term. There
19 is no recommendation for a term of probation in the
20 agreement.

21 THE COURT: All right.

22 Now, in our preliminary review of the documents
23 that were sent in advance of sentencing, there was some
24 sharing with both the Swiss government and the Government of
25 Ecuador, I believe?

Proceedings

19

1 MR. LAX: Yes, Your Honor.

2 So with respect to the fine, 50 percent of the
3 total fine is due to the United States within 10 days of
4 sentencing, and then the balance of the fine is due within
5 12 months and 10 days. Part of the agreement provides for
6 credit to that balance of up to \$93,640,017 paid to
7 authorities in Switzerland, or paid to authorities in
8 Ecuador; meaning 93 million, approximately, to both. So it
9 could be the full, essentially, remaining 50 percent if
10 those balances are paid within 12 months.

11 THE COURT: And if they're not, then the full
12 amount is paid to the Government of the United States?

13 MR. LAX: Exactly. Whatever balance is remaining
14 is paid to the United States essentially one year and ten
15 days from sentencing, from today.

16 THE COURT: Now, on the criminal forfeiture,
17 what's the payment schedule there?

18 MR. LAX: All criminal forfeiture is to be paid
19 within 10 days of today.

20 THE COURT: Today, or the date of judgment?

21 MR. LAX: Yes, Your Honor.

22 THE COURT: Is that true of the \$400 special
23 assessment?

24 MR. LAX: It is, Your Honor.

25 THE COURT: Is there a provision for reporting, as

Proceedings

20

1 well?

2 MR. LAX: Yes, Your Honor. So there are a number
3 of provisions in the agreement itself.

4 The company will continue to implement appropriate
5 corporate compliance and ethics programs. That's set forth
6 in paragraphs 9 and 10 of the agreement, and also in
7 attachment C to the agreement. Of course the company will
8 abide by all terms of the agreement, and that is enumerated
9 in paragraph 8.

10 The company will also regularly report on
11 corporate compliance and remedial measures. That's set
12 forth in paragraph 25 and attached D to the agreement. The
13 defendant company will also cooperate fully with the
14 Government and report certain allegations of misconduct.
15 That's in paragraphs 12 through 13 of the agreement.

16 I think those are the key reporting provisions.

17 THE COURT: Mr. Leclercq, is that your
18 understanding of the sentence that would be imposed by the
19 Court?

20 MR. LECLERCQ: Yes, Your Honor.

21 THE COURT: Mr. Racanelli, is that also your
22 understanding?

23 MR. RACANELLI: It is, Your Honor, with one very
24 small quibble: That the fine and the forfeiture is due 10
25 business days after judgment. But otherwise, it's correct.

Proceedings

21

1 THE COURT: All right.

2 There is a right to restitution. I have not seen
3 any, at this point, claim made by a victim.

4 Is that anticipated as forthcoming, Mr. Lax?

5 MR. LAX: No, Your Honor. We've not identified
6 any victims, so we don't anticipate restitution being a
7 component of the judgment.

8 THE COURT: All right. Thank you.

9 Now, that being the case, either Mr. Racanelli or
10 Mr. Leclercq, do you have any questions for me about the
11 proposed sentence or anything that we've done thus far in
12 the hearing?

13 MR. RACANELLI: I do not, Your Honor.

14 MR. LECLERCQ: I do not, Your Honor. Thank you.

15 THE COURT: What I want to do, then, next is to
16 proceed directly to the allocution of the plea itself.

17 Mr. Leclercq, it has been recommended by both the
18 defense and the Government that this fixed sentence be the
19 sentence that the Court imposes. The first thing we must
20 attend to now is to actually receive the plea of Gunvor with
21 respect to the charge.

22 So with respect to the one count in the
23 information, what is Gunvor's plea, guilty or not guilty,
24 Mr. Leclercq?

25 MR. LECLERCQ: Guilty, Your Honor.

Proceedings

22

1 THE COURT: Is the corporation, Mr. Leclercq,
2 pleading guilty voluntarily and of its own free will?

3 MR. LECLERCQ: Yes, Your Honor.

4 THE COURT: Has anyone threatened or forced the
5 corporation to plead guilty?

6 MR. LECLERCQ: No, Your Honor.

7 THE COURT: And other than the proposed sentence
8 that has just been articulated on the record by Mr. Lax, has
9 anyone made any promises to the corporation to get it to
10 plead guilty or that there would be something other than the
11 sentence that Mr. Lax has just set forth on the record?

12 MR. LECLERCQ: No, Your Honor.

13 THE COURT: Now, the last item is to establish on
14 the record that there is actually a factual basis for the
15 plea that the corporation has entered, and that is done by
16 setting forth on the record maybe a narrative statement that
17 you may have already prepared that tells me what it is that
18 the corporation says that it did that leads it to plead
19 guilty to this charge.

20 MR. LECLERCQ: Gunvor, S.A. admits to the facts
21 contained in the Statement of Facts, which I believe is in
22 Attachment A of the Plea Agreement. And Gunvor further
23 admits that between 2011 and 2020, the company, through its
24 former employees and agents, knowingly and willfully joined
25 a conspiracy to violate the FCPA by making payments to

Proceedings

23

1 intermediaries with the intent that a portion of those
2 payments will be used to bribe Ecuadorian government
3 officials to secure and mention business with Ecuador
4 state-owned oil company, Petroecuador.

5 THE COURT: Mr. Lax, is the Government satisfied
6 with the allocution?

7 MR. LAX: Yes, Your Honor. Certainly in light of
8 the stipulated statement of facts in Attachment A.

9 THE COURT: Then the Court is satisfied, as well.

10 Mr. Leclercq, I find first that the board has, in
11 fact, adopted a corporate resolution that authorizes the
12 entry of a plea of guilty to the charge in the information,
13 that the board properly authorized you to first waive the
14 grand jury indictment and proceed by way of information, and
15 that the board had properly authorized you to act as its
16 representative here at the Rule 11 plea and sentencing.

17 The Court finds that the corporation understands
18 its rights, that the corporation understood the maximum
19 sentence and fine that could be imposed by pleading guilty,
20 that the decision to waive its rights and plead guilty was a
21 knowing decision, and that it was also a voluntary decision,
22 and on the basis of the statement of facts that's annexed to
23 the Plea Agreement. And on the statement that you've made
24 under oath here in open court, I find that there is, in
25 fact, a valid, factual basis to support the entry of the

Proceedings

24

1 plea of guilty to the one count of the information, and the
2 Court accepts that plea of guilty to that one count of the
3 information and is now ready to impose sentence because the
4 Court finds that the sentence is a just one.

5 Though I do want to ask for further clarification
6 with respect to the fine, and perhaps, Mr. Lax, can you help
7 on this as well.

8 We did talk about the maximum fine. How was it
9 determined where in the range the fine should fall in this
10 case?

11 MR. LAX: Yes, Your Honor.

12 So it began with the guidelines. So the offense
13 level that was calculated was a level of 46. The base fine
14 was the gross gain, which was \$384,164,176. We calculated a
15 culpability score of 5. All of which provided for a fine
16 range of \$384,164,176 as the minimum, and the maximum being
17 two times that, approximately \$768 million. The criminal
18 fine that the parties negotiated and agreed and are
19 recommending to the Court is, again, approximately
20 374 million, and that was 25 percent off of the 30th
21 percentile within the guidelines range.

22 THE COURT: The culpability score, is that a
23 reference to the American Bar Association process?

24 MR. LAX: The culpability score is set forth in
25 paragraph 21(D), and the multipliers are 1 and 2.

Proceedings

25

1 THE COURT: And, Mr. Racanelli, as defense
2 counsel, were you involved in those computations as well?

3 MR. RACANELLI: Yes, Your Honor. As Mr. Lax
4 mentioned, this was a negotiated resolution, and I and
5 Ms. Mermelstein were involved in that process.

6 THE COURT: Now, was there any accounting done by
7 the corporation itself as to the effect and impact on the
8 corporation?

9 MR. RACANELLI: Yes, Your Honor.

10 THE COURT: And does the corporation remain viable
11 after the payment of these economic penalties?

12 MR. RACANELLI: We believe it does, Your Honor.

13 THE COURT: Now, before I impose sentence,
14 Mr. Leclercq, do you wish to be heard on behalf of the
15 corporation personally?

16 MR. LECLERCQ: No. Thank you, Your Honor.

17 THE COURT: Mr. Racanelli, do you wish to be heard
18 on behalf of the corporation personally?

19 MR. RACANELLI: No. Thank you, Your Honor.

20 THE COURT: All right.

21 Mr. Lax, do you wish to be heard on behalf of the
22 Government?

23 MR. LAX: No, Your Honor. Thank you.

24 THE COURT: Okay.

25 Now bolstered by an understanding of the

Proceedings

26

1 accounting process and where the penalty falls in connection
2 with the crime to be punished and the impact that it might
3 have on the ability of the corporation to proceed going
4 forward and that it would maintain its viability, the Court
5 is prepared to accept the sentence as recommended both by
6 the Government and by the defense.

7 What I'm going to do to make sure that all the I's
8 get dotted and all the T's get crossed, Mr. Lax, I'm going
9 to be guided by -- this is where that second time comes
10 in -- your reading into the record the economic consequences
11 of sentence.

12 MR. LAX: Yes, Your Honor.

13 The total criminal fine is \$374,560,071.

14 THE COURT: Mr. Racanelli, is that your
15 understanding as well?

16 MR. RACANELLI: Yes, Your Honor.

17 THE COURT: We'll go item by item, Mr. Lax.

18 MR. LAX: Then there's the timing of when those
19 were due and the offsets which we've discussed on the
20 record. I don't know that the Court wishes for me to go
21 through those again now, but happy to if the Court prefers.

22 THE COURT: Why don't you do it just for
23 imposition purposes.

24 MR. LAX: Yes, Your Honor.

25 So approximately 50 percent of that total fine

Proceedings

27

1 will be paid no later than 10 business days after the entry
2 of judgment by the Court, and that amount is \$187,280,036.

3 Then there will be credit of up to \$93,640,017 of
4 the total fine against any amount that the company pays to
5 authorities in Switzerland and/or Ecuador. And then any
6 amount unpaid to those authorities that then resolves the
7 remaining balance shall be paid within 12 months and then 10
8 business days from the entry of judgment. Those are the
9 fine provisions.

10 THE COURT: Is that your understanding, as well,
11 Mr. Racanelli?

12 MR. RACANELLI: It is, Your Honor.

13 THE COURT: Then that fine provision is the order
14 of the Court at sentence.

15 Next, Mr. Lax?

16 MR. LAX: The forfeiture provisions provide for
17 forfeiture in the amount of \$287,138,444 to be paid in full
18 within 10 business days of the entry of judgment.

19 THE COURT: And, Mr. Racanelli, is that your
20 understanding, as well?

21 MR. RACANELLI: Correct, Your Honor.

22 THE COURT: That criminal forfeiture penalty is
23 therefore ordered as part of the sentence.

24 MR. LAX: And we also, Your Honor, have as
25 Attachment G to the agreement a Consent Order of Forfeiture,

Proceedings

28

1 which the parties will sign and hand up to the Court's
2 deputy.

3 THE COURT: All right. And the Court will
4 execute.

5 MR. LAX: And finally, for the economics, there's
6 the \$400 mandatory special assessment paid within 10 days of
7 the date of sentencing.

8 THE COURT: You said 10 business days,
9 Mr. Racanelli?

10 MR. RACANELLI: Actually, this one is 10 regular
11 days, Your Honor.

12 THE COURT: Okay, 10 regular days.

13 Therefore, that is ordered at sentence as well.

14 Anything else, Mr. Lax?

15 MR. LAX: No, Your Honor.

16 (Pause in proceedings.)

17 THE COURT: All right. We have apparently checked
18 all our checklist, as well. The sentence of the Court is,
19 therefore --

20 You had one document you wanted me to execute,
21 Mr. Lax?

22 MR. LAX: Yes, Your Honor.

23 THE COURT: The document is being signed in open
24 court.

25 (Pause in proceedings.)

Proceedings

29

1 THE COURT: All right. We will enter the judgment
2 and also the consent that we just executed.

3 Is there anything else that the Court needs to
4 attend to before we adjourn from either side?

5 MR. LAX: No, Your Honor.

6 I'll just note for the record, and forgive me if I
7 missed it, that there were no other promises made outside of
8 the Plea Agreement. I just wanted to note that.

9 THE COURT: I think I alighted them together. But
10 yes, that was my understanding, if I didn't ask that
11 question. I think I did.

12 But now that you raised it, we'll have
13 Mr. Leclercq and Mr. Racanelli respond.

14 MR. RACANELLI: That is correct, Your Honor.

15 MR. LECLERCQ: Yes, that is correct, Your Honor.

16 THE COURT: We may have dotted that I twice, but
17 that's okay.

18 MR. LAX: Nothing else from the Government, Your
19 Honor.

20 Thank you.

21 THE COURT: Anything else from the defense?

22 MR. RACANELLI: No, Your Honor.

23 THE COURT: All right. Thank you all.

24 Mr. Leclercq, safe travels.

25 MR. LECLERCQ: Thank you, Your Honor.

Proceedings

30

1 THE COURT: Happy to see this chapter has ended,
2 and I look forward to Gunvor's continued participation
3 lawfully in the market.

4 MR. LECLERCQ: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 (Matter concluded.)

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10 CERTIFICATE OF REPORTER

11 I certify that the foregoing is a correct transcript of the
12 record of proceedings in the above-entitled matter.
13

14 /s/ Kristi Cruz

15 _____
16 Kristi Cruz, RMR, CRR, RPR
17 Official Court Reporter
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Kristi Cruz RMR, CRR, RPR
Official Court Reporter